

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION ATHLETIC
GRANT-IN-AID CAP ANTITRUST
LITIGATION

CASE NO. 14-md-2541-CW
CASE NO. 14-cv-2758-CW

STIPULATED ~~PROPOSED~~
PROTECTIVE ORDER REGARDING
CONFIDENTIALITY OF DOCUMENTS
AND MATERIALS

This Document Relates to:

ALL ACTIONS

14-md-2541-CW
14-cv-2758-CW

STIPULATED ~~PROPOSED~~ PROTECTIVE ORDER REGARDING CONFIDENTIALITY

1 In order to protect confidential information obtained from or disclosed by the respective
2 parties or nonparties in connection with this litigation and pursuant to the Court's authority under
3 Federal Rule of Civil Procedure 26(c) and Federal Rule of Evidence 502, the parties submit as
4 follows:

5 **PURPOSES AND LIMITATIONS**

6 1. Disclosure and discovery activity in these actions are likely to involve production
7 of trade secrets, confidential, proprietary, or private information for which special protection from
8 public disclosure and from use for any purpose other than prosecuting this litigation would be
9 warranted. The unrestricted disclosure of such information would cause undue damage to the
10 parties and their businesses or to third parties. The disclosure of trade secrets, proprietary
11 information, and confidential business and financial information would harm the disclosing party
12 if it was made known to the disclosing party's competitors, and in some cases, could violate the
13 confidentiality agreements between the disclosing party and third parties or parties to those
14 agreements. Disclosure of private information and educational information is also governed by
15 statute and other laws such that disclosure of that information may be inconsistent with those
16 statutes and other laws. Accordingly, the parties in these actions hereby stipulate to and petition
17 the Court to enter the following Protective Order. The parties acknowledge that this Order does
18 not confer blanket protections on all disclosures or responses to discovery, and that the protections
19 outlined herein extend only to the limited information or items that are entitled to treatment as
20 confidential under applicable legal principles. This Protective Order is, therefore, entered into
21 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to protect information entitled to be
22 kept confidential.

23 2. The parties further acknowledge, as set forth in Paragraph 17, below, that this
24 Protective Order creates no entitlement to file confidential information under seal; the relevant
25 court rules (e.g., Civil Local Rule 79-5) set forth the procedures that must be followed, and reflect
26 the standards that will be applied, when a party seeks permission from the Court to file material
27 under seal.

28 3. Documents and other information produced by the parties or nonparties in

1 connection with these actions shall be used solely for purposes of prosecuting, defending or
 2 attempting to settle these actions, whether such information is designated “Confidential” or
 3 “Highly Confidential – Counsel Only” or not.

4 4. The protections outlined in this Order apply only to information appropriately
 5 designated as “Confidential” or “Highly Confidential – Counsel Only” pursuant to the terms of
 6 this Order (collectively, the “Protected Information”).

7 5. The parties have reviewed the Case Management Order (Dkt. 132), which includes
 8 Judge Wilken’s Civil Pretrial Order, and Magistrate Judge Nathanael M. Cousins’ Civil Standing
 9 Order. The parties represent that nothing contained in this Protective Order conflicts with any of
 10 the provisions in those orders.

11 **NONDISCLOSURE OF PROTECTED INFORMATION**

12 6. Except with the prior written consent of the party or non-party originally
 13 designating a document, discovery response, or deposition transcript (the “Disclosing Party”),
 14 Protected Information may not be disclosed to any person except as specifically authorized herein.

15 7. Any Disclosing Party may designate as Confidential (by stamping the relevant page
 16 or portion “Confidential”) any document, response to discovery, or deposition transcript which
 17 that Disclosing Party considers in good faith to contain information involving trade secrets,
 18 proprietary information, confidential business, educational or financial information, private
 19 information or other information subject to protection under California or federal law, or another
 20 applicable legal standard (“Confidential Information”). Where a document or response consists of
 21 more than one page, the first page and each page on which Confidential Information appears shall
 22 be so designated. Confidential Information may only be disclosed to those persons set forth in
 23 Paragraph 12 below.

24 8. Any Disclosing Party may designate as Highly Confidential (by stamping the
 25 relevant page or portion “Highly Confidential – Counsel Only”) any document, response to
 26 discovery, or deposition transcript which that Disclosing Party considers in good faith to contain
 27 Confidential Information, the disclosure of which to another party or non-party would create a
 28 substantial risk of serious harm that could not be avoided by less restrictive means (“Highly

1 Confidential – Counsel Only Information”). Where a document or response consists of more than
2 one page, the first page and each page on which Highly Confidential Information appears shall be
3 so designated. Highly Confidential – Counsel Only Information may only be disclosed to those
4 persons set forth in Paragraph 13 below.

5 9. A Disclosing Party may designate information disclosed by it during a deposition
6 or in response to written discovery as “Confidential” or “Highly Confidential – Counsel Only” by
7 so indicating in said responses or on the record at the deposition. Additionally a party may
8 designate in writing, within 21 days after receipt of said responses or of the deposition transcript
9 for which the designation is proposed, the specific pages of the transcript and/or specific responses
10 that are “Confidential” or “Highly Confidential – Counsel Only.” Any party may object to such
11 proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures
12 described in Paragraph 14 below. Unless otherwise designated during the deposition, deposition
13 transcripts shall be treated in their entirety as “Highly Confidential – Counsel Only” Information
14 for 21 days after receipt. All parties shall affix the relevant legend required by paragraphs 7
15 and/or 8 of this Order on each page of the deposition transcript designated “Confidential” or
16 “Highly Confidential – Counsel Only” at the deposition or by subsequent written notice.

17 10. The inadvertent failure to designate Protected Information that has been disclosed
18 as Confidential or Highly Confidential – Counsel Only shall be without prejudice to any claim by
19 the Disclosing Party that it is Confidential or Highly Confidential – Counsel Only and shall not
20 waive the Disclosing Party’s right to secure protection under this Order for such material. In the
21 event a Disclosing Party designates material as Confidential or Highly Confidential – Counsel
22 Only after it has been inadvertently disclosed, the receiving party will treat such material pursuant
23 to the relevant designation pursuant to this Order and shall make arrangements with the Disclosing
24 Party to have the Protected Information, including copies, marked “Confidential” or “Highly
25 Confidential – Counsel Only.”

26 11. If it comes to a Disclosing Party’s attention that information or items that it
27 designated for protection do not qualify for protection, the Disclosing Party must promptly notify
28 all other parties that it is withdrawing the designation.

PERMISSIBLE DISCLOSURES

12. Confidential Information that is designated as such in accordance with the terms of this Protective Order shall not be disclosed to any person other than the following, and only to the extent necessary to litigate these actions:

a. counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for these actions;

b. employees of such counsel, including a party's in-house legal staff;

c. plaintiffs, or any officer or employee of a party, to the extent deemed necessary by counsel for the prosecution or defense of these actions;

d. consultants or expert witnesses retained for the prosecution or defense of these actions, provided that each such person shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information;

e. the original author, addressees, or recipients of the Confidential Information;

f. the Court, court personnel and court reporters; and

g. witnesses (other than persons described in Paragraph 12(d)) who testify at deposition or at trial, provided that such witnesses shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information; and

h. persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that such persons or entities shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information.

13. Highly Confidential – Counsel Only Information that is designated as such in accordance with the terms of this Protective Order shall not be disclosed to any person other than the following, and only to the extent necessary to litigate these actions:

a. counsel for the respective parties to this litigation, including in-house

1 counsel and co-counsel retained for these actions;

2 b. employees of such counsel, including a party's in-house legal staff;

3 c. consultants or expert witnesses retained for the prosecution or defense of
4 these actions, provided that each such person shall execute a copy of the certification annexed to
5 this Protective Order as Exhibit A before being shown or given any Highly Confidential – Counsel
6 Only Information;

7 d. the original author, addressees, or recipients of the Highly Confidential –
8 Counsel Only Information;

9 e. the Court, court personnel and court reporters;

10 f. persons or entities that provide litigation support services (e.g.,
11 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
12 retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that
13 such persons or entities shall execute a copy of the certification annexed to this Protective Order as
14 Exhibit A before being shown or given any Confidential Information; and

15 g. witnesses (other than persons described in Paragraph 13(c)) who testify at
16 deposition or at trial, provided that (1) the Receiving Party has a good faith belief that such
17 witness previously had access to or otherwise had obtained knowledge of the Highly Confidential
18 – Counsel Only Information; and (2) such witnesses shall execute a copy of the certification
19 annexed to this Protective Order as Exhibit A before being shown or given any Highly
20 Confidential – Counsel Only Information.

21 **RESOLVING DISPUTED CLASSIFICATIONS**

22 14. Should a party wish to object to a Confidential or Highly Confidential – Counsel
23 Only designation of any material, that party shall make a written Designation Objection to the
24 Disclosing Party, as set forth below:

25 a. Designation Objection: The objecting party shall identify with specificity
26 (i.e., by document control numbers, deposition transcript page and line reference, or other means
27 sufficient to locate such materials) each document bearing a disputed Confidential or Highly
28 Confidential – Counsel Only designation. A Designation Objection will trigger an obligation on

the part of the Disclosing Party to make a good faith determination of whether the disputed designation(s) is entitled to be treated as Confidential Information or Highly Confidential – Counsel Only Information pursuant to the terms of this Protective Order. Within ten (10) court days the Disclosing Party shall respond in writing to the Designation Objection either agreeing to remove the disputed designation(s) or stating the Disclosing Party’s refusal to do so. During that period, the parties will meet and confer in good faith.

b. Court Determination: If the Disclosing Party refuses to agree to remove the Confidential or Highly Confidential – Counsel Only designation pursuant to subsection (a) above, the Objecting Party may make a written application to the Court to remove the protective treatment in compliance with applicable court rules and orders. The application will be made within ten (10) court days of receiving the Disclosing Party’s refusal to remove the disputed designation(s). In any judicial proceeding challenging a Confidential or Highly Confidential – Counsel Only designation, the burden of persuasion with respect to the propriety of the designation shall remain upon the Disclosing Party. If the Objecting Party fails to make such timely application, the Disclosing Party’s designation will remain in effect.

c. Pending a ruling, all parties shall continue to treat the information subject to the Designation Objection pursuant to the disputed designation under the terms of this Protective Order.

PROTECTED INFORMATION AT TRIAL

15. The terms of this Protective Order do not preclude, limit, restrict or otherwise apply to the use of documents at trial. Subject to the Federal Rules of Evidence, Protected Information may be offered at any court hearing (including trial) provided that the offering party confers in good faith with the Disclosing Party (and, if the Disclosing Party is not a party to these actions, a representative of the offering party’s opposing parties (hereinafter together the “Affected Parties”)) over the proposed use of that information five days prior to the anticipated use. If it is not practicable for the offering party to provide the Affected Parties with five days’ notice, the offering party must provide the Affected Parties with as much notice as practicable. Regardless of the notice provided, the offering party must take all reasonable steps to ensure that the Affected

1 Parties are provided a meaningful opportunity to be heard by the Court regarding the proposed use
 2 of Protected Information at any court hearing or trial, and may not offer such information until the
 3 Affected Parties have been given an opportunity to provide an objection on the record.

4 16. Any party or interested non-party may move the Court for an order that the
 5 evidence be received in camera or under other conditions to prevent unnecessary disclosure. That
 6 court will then determine whether the proffered evidence should continue to be treated as either
 7 Confidential Information or Highly Confidential – Counsel Only Information and, if so, what
 8 protection, if any, may be afforded to such information at the trial.

9 **PROTECTED INFORMATION SUBPOENAED OR**
 10 **ORDERED PRODUCED IN OTHER LITIGATION**

11 17. If at any time any Protected Information is subpoenaed by a court, administrative or
 12 legislative body, or by any other person or entity purporting to have authority to require the
 13 production of such information, the person to whom the subpoena is directed shall give written
 14 notice thereof to the Disclosing Party as soon as reasonably practicable but in no event more than
 15 five (5) days after receipt of the subpoena. After receipt of the notice specified under this
 16 paragraph, the Disclosing Party shall have the sole responsibility for obtaining any order it
 17 believes necessary to prevent disclosure of the Protected Information that has been subpoenaed. If
 18 the Disclosing Party does not move for or obtain a court order prohibiting such production or
 19 disclosure within the time allowed for production by the subpoena (or within such time as a court
 20 may direct or as may be agreed upon between the Disclosing Party and the subpoenaing party) and
 21 give written notice of such motion to the subpoenaing party and the person to whom the subpoena
 22 is directed, the person to whom the subpoena is directed may commence production in response
 23 thereto. The person to whom the subpoena is directed shall not produce any Protected Information
 24 while a motion for a protective order brought pursuant to this paragraph is pending or while any
 25 appeal from or request for appellate review of such motion is pending, unless ordered by a court to
 26 do so.

27 **FILING DOCUMENTS UNDER SEAL**

28 18. No Protected Information shall be filed in the public record without the written

1 permission of the Disclosing Party, or a court order. The parties shall comply with the relevant
2 court rules (e.g., N.D. Cal. Civil L.R. 79-5) regarding filing of documents under seal. Copies of
3 any pleading, brief, or other document containing Protected Information which is served on
4 opposing counsel shall be stamped **“CONFIDENTIAL PURSUANT TO PROTECTIVE**
5 **ORDER”** or **“HIGHLY CONFIDENTIAL – COUNSEL ONLY PURSUANT TO**
6 **PROTECTIVE ORDER”**, shall be transmitted via email or cover letter and envelope bearing
7 similar designation, and shall be treated in accordance with the provisions of this Protective Order.

8 **NON-TERMINATION**

9 19. All provisions of this Protective Order restricting the communication or use of
10 Protected Information shall continue to be binding after the conclusion of this action unless
11 otherwise agreed or ordered. In addition, the court retains jurisdiction to resolve any dispute
12 concerning the disclosure of Protected Information in violation of the terms of this Order, unless
13 otherwise agreed or ordered.

14 20. Unless otherwise ordered or agreed to in writing by the Disclosing Party, within
15 sixty (60) days after the final termination of this litigation by settlement or exhaustion of all
16 appeals all parties in receipt of Protected Information shall use reasonable efforts to either return
17 such materials and copies thereof to the Disclosing Party or destroy such Protected Information
18 and certify that fact. The Receiving Party’s reasonable efforts shall not require the return or
19 destruction of Protected Information that (i) is stored on backup storage media made in accordance
20 with regular data backup procedures for disaster recovery purposes, (ii) is located in the email
21 archive system or archived electronic files of departed employees, or (iii) is subject to legal hold
22 obligations. Backup storage media will not be restored for purposes of returning or certifying
23 destruction of Protected Information, but such retained information shall continue to be treated in
24 accordance with the Order. Counsel for the parties shall be entitled to retain copies of court papers
25 (and exhibits thereto), correspondence, pleadings, deposition and trial transcripts (and exhibits
26 thereto), expert reports and attorney work product that contain or refer to Protected Information,
27 provided that such counsel and employees of such counsel shall not disclose such Protected
28 Information to any person, except pursuant to court order.

1 21. Nothing in this Order shall be interpreted in a manner that would violate any
2 applicable canons of ethics or codes of professional responsibility.

3 **MODIFICATION PERMITTED**

4 22. Nothing in this Protective Order shall prevent any party or other person from
5 seeking modification of this Protective Order or from objecting to discovery that it believes to be
6 otherwise improper.

7 **RESPONSIBILITY OF ATTORNEYS**

8 23. The counsel for the parties are responsible for employing reasonable measures,
9 consistent with this Protective Order, to control duplication of, access to, and distribution of copies
10 of Protected Information.

11 24. The counsel for the parties are responsible for administering and keeping the
12 executed original copy of Exhibit A pursuant to ¶¶ 12(d), 12(g), 12(h), 13(c), 13(f) and 13(g)
13 above.

14 **NO WAIVER**

15 25. Nothing herein shall be deemed to waive any applicable privilege or work product
16 protection or to affect the ability of a party to seek relief for an inadvertent disclosure of material
17 protected by privilege or work product protection. Pursuant to the Court's authority under Federal
18 Rule of Evidence 502 and any other applicable law, rule, or legal principal, the inadvertent
19 production of documents or information subject to the attorney-client privilege or work-product
20 immunity shall not waive the privilege or immunity if a request for the return of such documents
21 or information is made promptly after the Disclosing Party learns of its inadvertent production.

22 26. Nothing contained in this Protective Order and no action taken pursuant to it shall
23 prejudice the right of any party to contest the alleged relevancy, admissibility or discoverability of
24 the confidential documents and information sought.

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26 IT IS SO STIPULATED.
27
28

1 DATED: January 9, 2015

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19 DATED: January 9, 2015

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FILER'S ATTESTATION

I, KAREN HOFFMAN LENT, am the ECF user whose identification and password are being used to file this **STIPULATED [PROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS AND MATERIALS**. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

/s/ Karen Hoffman Lent

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2 **PURSUANT TO STIPULATION,**
3 **IT IS SO ORDERED.**

4 DATED: January 15, 2015

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7 THE HON. CLAUDIA WILKEN
8 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

I, _____, state:

1. My address and telephone number are: _____

2. My present employer and my employer's address are: _____

3. I have received a copy of the Stipulated Protective Order Regarding Confidentiality of Documents and Materials (the "Protective Order") entered in the case of *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, in the United States District Court for the Northern District of California, No. 4:14-MD-2541-CW.

4. I have carefully read the Protective Order and understand its provisions.

5. I will comply with all the provisions of the Protective Order.

6. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order any documents designated Confidential or Highly Confidential – Counsel Only, and I will use such Confidential Information and/or Highly Confidential – Counsel Only Information only for the allowed purposes stated in the Order.

7. I will return all documents that are designated Confidential or Highly Confidential – Counsel Only to counsel for the party from whom I obtained such documents.

8. I will submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of the enforcement of the Protective Order, and understand that violation of the Protective Order can constitute contempt of Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

SIGNED: _____, 201__.

Signature: _____

Printed Name: _____